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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JAIME PEDRAZA, Defendant and Appellant.	A143498 (San Mateo County Super. Ct. No. SC076759A)

Defendant Jaime Pedraza appeals an order revoking his probation based on a finding that he had committed domestic violence. He contends the trial court abused its discretion in admitting hearsay evidence of the victim's out-of-court statements. We shall affirm the order.

I. BACKGROUND

Defendant was convicted of false imprisonment (Pen. Code,[1] § 236) in 2013 and was placed on probation. Among the terms of his probation, he was required to obey all laws.

In October 2014, the People petitioned to revoke defendant's probation on the ground he had committed false imprisonment (§ 236) and domestic violence (§ 273.5, subd. (a)). The victim, O.E., did not testify at the probation revocation hearing, and the court noted that in light of O.E.'s refusal to testify, the parties had stipulated that she was unavailable.

[1] All statutory references are to the Penal Code.

Before the hearing, defendant moved to exclude evidence of statements the victim made to a police officer the morning after the alleged incident. The court deferred its ruling until after it heard the testimony.

Officer Lydia Cardoza of the East Palo Alto Police Department testified that she went to defendant's apartment at approximately 7:00 a.m. on September 30, 2014 in response to a report of domestic violence. She spoke with O.E., who also lived at the apartment. O.E. was alone in the home with her three children, a two-month-old baby and twins who were about a year and a half old. O.E. told Cardoza she called 911 to report an incident that had happened the previous night. According to O.E., she and defendant lived together, and her baby was his child. The previous night, as the couple argued, defendant pushed O.E. into the bathroom and, while insulting her, tried to choke her. As defendant choked her, O.E. had difficulty breathing. He pushed her out of the apartment, and at the front of the apartment complex he threw a lit cigarette at her face. She felt a slight burning sensation below her eye. Defendant did not let O.E. back into the apartment, and she spent the night in the carport. The children remained in the apartment. The next morning, as defendant left for work, O.E. crawled through the bars on a window and called 911.

As they spoke, O.E. showed Cardoza slight red markings, which appeared to be bruising, on either side of her neck. During the conversation, O.E. occasionally cried. She told Cardoza she did not call 911 until the morning after the incident because she did not have a cell phone with her during the night; she also said she was tired of being mistreated.

That night, Cardoza and two other officers went to the apartment. Cardoza and one officer went to the front door, and after they had knocked for three or four minutes, O.E. answered the door. Cardoza asked O.E. if she had seen defendant, and O.E. said he had not come home from work that day. Another officer saw someone matching defendant's description jump out of a back window and run away. Cardoza went in the direction the officer indicated and, about a block away, saw defendant walking quickly away from the direction of the apartment. Cardoza spoke with defendant, who told her

he had had an argument with O.E. the previous night but that he had never touched her. When Cardoza told him O.E. had said he choked her, defendant shrugged his shoulders and said, "I guess." He admitted having jumped out of the window and run away.

The trial court ruled the evidence of O.E.'s statements was admissible, found defendant in violation of his probation, and revoked probation and reinstated it with a four-month term in county jail.

II. DISCUSSION

Defendant contends the trial court erred in admitting O.E.'s hearsay statements, which he argues were the only evidence supporting the petition.

A court may revoke probation "if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of his or her supervision . . . or has subsequently committed other offenses . . . ." (§ 1203.2, subd. (a).) Revocation of probation is not part of a criminal prosecution, and therefore a defendant at a probation revocation hearing is not entitled to the full panoply of rights due to a defendant in a criminal prosecution. (*People v. Stanphill* (2009) 170 Cal.App.4th 61, 72 (*Stanphill*); *People v. Rodriguez* (1990) 51 Cal.3d 437, 441 (*Rodriguez*).) A probation violation need only be proved by a preponderance of the evidence. (*Rodriguez*, at p. 446; *Stanphill*, at p. 72.)

The confrontation clause of the Sixth Amendment does not apply to probation revocation hearings. (*Stanphill*, *supra*, 170 Cal.App.4th at p. 78; *People v. Shepherd* (2007) 151 Cal.App.4th 1193, 1199, fn. 2.) However, probationers have a general due process right to confront and cross-examine adverse witnesses, unless the trial court finds good cause for not allowing confrontation. (*Stanphill*, at p. 78.) In determining whether to admit hearsay, the court determines whether the hearsay " ' "bears a substantial degree of trustworthiness." ' " (*In re Miller* (2006) 145 Cal.App.4th 1228, 1235 (*Miller*).) This determination rests within the trial court's discretion. (*Ibid*.)

In *United States v. Comito* (9th Cir. 1999) 177 F.3d 1166, 1170 (*Comito*), the Ninth Circuit articulated a balancing test under which a court weighs the probationer's

interest in confronting the witness against the government's good cause for denying confrontation. The weight given to the right to confrontation depends primarily on "the importance of the hearsay evidence to the court's ultimate finding and the nature of the facts to be proven by the hearsay evidence." (*Id*. at p. 1171, fn. omitted.) California courts have endorsed this test. (*Stanphill*, *supra*, 170 Cal.App.4th at pp. 78–79; *Miller*, *supra*, 145 Cal.App.4th at pp. 1236–1237.)

The court in *Miller* noted that the *Comito* test was nearly identical to one adopted by the California Supreme Court in considering the admissibility of prior testimony at a probation revocation hearing. (*Miller*, *supra*, 145 Cal.App.4th at p. 1237, citing *People v. Arreola* (1994) 7 Cal.4th 1144, 1160 (*Arreola*).) In *Arreola*, the high court noted that "[t]he broad standard of 'good cause' is met (1) when the declarant is 'unavailable' under the traditional hearsay standard [citation], (2) when the declarant, although not legally unavailable, can be brought to the hearing only through great difficulty or expense, or (3) when the declarant's presence would pose a risk of harm (including, in appropriate circumstances, mental or emotional harm) to the declarant." (*Arreola*, at pp. 1159–1160; and see *People v. Winson* (1981) 29 Cal.3d 711, 719 ["Generally, if the witness is legally unavailable, the former testimony may be admitted"].) The court went on: "Thus, in determining the admissibility of evidence on a case-by-case basis, the showing of good cause that has been made must be considered together with other circumstances relevant to the issue, including the purpose for which the evidence is offered (e.g., as substantive evidence of an alleged probation violation, rather than, for example, simply a reference to the defendant's character); the significance of the particular evidence to a factual determination relevant to a finding of violation of probation; and whether other admissible evidence, including, for example, any admissions made by the probationer, corroborates the former testimony, or whether, instead, the former testimony constitutes the sole evidence establishing a violation of probation." (*Arreola*, *supra*, 7 Cal.4th at p. 1160.) As explained in *Miller*, "[a]s the significance of the evidence to the ultimate finding increases, so does the importance of the parolee's confrontation right. Similarly, 'the more subject to question the accuracy and reliability of the proffered evidence, the

greater the releasee's interest in testing it by exercising his right to confrontation.' [Citation.]" (*Miller, supra*, at p. 1236.)

Applying these standards, we see no abuse of discretion in the trial court's decision to admit evidence of O.E.'s statements to Cardoza. There is no dispute that O.E. was unavailable, apparently because she refused to testify.[2] Under *Arreola*, this is sufficient to satisfy the "good cause" requirement. On the other side of the scale, we note that there was physical evidence corroborating O.E.'s statement that she had been choked, in the form of the marks on either side of her throat, that there was evidence that O.E. lived in the same home as defendant, and that defendant's action in fleeing when officers arrived could reasonably be seen as showing consciousness of guilt. Moreover, defendant himself replied "I guess" when Cardoza confronted him with O.E.'s accusation that he had choked her. These facts both reduce the significance of the challenged evidence and provide indicia of reliability. (See *Miller, supra*, 145 Cal.App.4th at p. 1236.) In the circumstances, the trial court did not abuse its discretion in concluding the good cause for the testimony outweighed defendant's interest in confrontation.

III. DISPOSITION

The order is affirmed.

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Rivera, J.

We concur:

_____
Ruvolo, P.J.

_____
Reardon, J.

[2] In ruling the challenged evidence was admissible, the trial court found good cause "based on the concession and stipulation of counsel that the . . . alleged victim is unavailable."